IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 756 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Appellant(s)
Versus
VALAND AMBALAL JOITARAM - Opponent(s)

==========

Appearance :
MR KT DAVE, APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 06/07/2006

ORAL JUDGMENT

1. Heard Mr.K.T.Dave, learned APP for the appellant State. Despite service of notice,

nobody appears on behalf of the respondent accused.

2. The State has filed this Appeal against the order passed by the learned Chief Judicial Magistrate, Mehsana in Chief Case No.5 of 1992 on 31.3.1993 acquitting the respondent accused from the charges levelled against him punishable under Sections 409 and 477 of the Indian Penal Code. This Court has granted leave to appeal and Appeal was admitted on 15.2.1994.

3. The facts in brief which are gathered from the order under Appeal are that one Mr. Punamchand H. Panchal has filed complaint with the Kheralu Police Station and that has been registered as Crime Register No.159 of 1986 against the respondent accused. It is alleged in the said complaint that the respondent accused was serving as Postmaster at Chada village and on 18.1.1986 he has

withdrawn an amount of Rs.7600/- and on 18.9.1986 an amount of Rs.364.30 ps by forging the signature of one Mr. Maneklal Girdharlal Suthar from his Account No.690059 and thereby he has misappropriated the said two amounts and used for his personal benefits. The allegation was also made against the respondent accused that he has also misappropriated the amount of Rs.4,950/- by giving credit of Rs.50/- only against the amount of Rs.5,000/- deposited by Shri Virabhai Harjibhai Prajapati. The respondent accused has, therefore, played mischief with the Government record and created false documents.

4. The respondent-accused was arrested and enlarged on bail. The charge-sheet was filed on 3.1.1987 and Criminal Case No.4 of 1987 was registered against him.

5. The learned Chief Judicial Magistrate has

considered the oral as well as documentary evidence during the course of the trial. He has recorded the statement of various parties and also gone through the oral as well as documentary evidence. After considering this oral as well as documentary evidence, he has summrised the entire case and given his findings in paras-32 as well as 33 of the judgment in respect of both the charges levelled against the respondent accused. While dealing with the charge regarding misappropriation of amount of Rs.4950/- by giving credit of Rs.50/- only as against deposit of Rs.5,000/-, it is observed in para-32 of the judgment that no documentary evidence has come on record and neither any Rojmel nor Cash-book of the post office are produced on record on the basis of which it can be proved that the P.W. Virabhai Prajapati has deposited Rs.5,000/- in his account with Post Office. It has also been observed in the order that the said P.W. was

not aware as to whether any receipt for payment of Rs.5,000/- was issued or whether any entry was made in his Pass-book. The learned Magistrate has, therefore, come to the conclusion that it has not been proved that the respondent accused has made any misappropriation of the amount from the account of the said P.W.

6. With regard to the second charge i.e withdrawal of amount by forging the signature of P.W. Maneklal Suthar, it is observed that the specimen signature of the said P.W was not obtained nor it was sent for the opinion of the hand-writing expert. In absence of any opinion from the hand-writing expert it cannot be proved that the respondent accused has forged the signature of the said P.W. and misappropriated the amount from his account for his personal benefits. The respondent accused was, therefore, acquitted from both these charges.

7. Mr.Dave, learned APP submitted that the judgment and order passed by the learned Magistrate is contrary to the evidence on record and that the prosecution has proved during the course of trial that the prosecution witness Shri Virabhai Harjibhai Prajapati has gone to open Saving Account with Rs.5,000/- and though the said prosecution witness has deposited the amount of Rs.5,000/- no receipt was issued nor any entry crediting the amount of Rs.5,000/- was made in the government record. He has further submitted that the learned Magistrate has not correctly appreciated the case of the prosecution that the respondent accused has withdrawn an amount of Rs.7600/- and Rs.360/- by forging signature of Mr. Maneklal Girdharlal Suthar and thereby he has misused his position as Postmaster. He has further submitted that looking to the facts and circumstances of the case and evidence which

has come on record the respondent accused ought to have been convicted by the learned Magistrate and judgment and order passed by the learned Magistrate therefore, deserves to be quashed and set aside.

8. After having gone through the evidence on record and the judgment and order passed by the learned Magistrate as well as after having considered the submissions made by Mr.Dave, learned APP, the Court is of the view that the learned Magistrate has at length discussed the oral as well as documentary evidence and has given clear cogent and convincing reasons for acquitting the respondent-accused. The Court is in complete agreement with the reasons given by the learned Magistrate in his order. Prosecution witness has failed to produce any receipt showing that he has deposited Rs.5,000/- similarly in absence of any opinion of hand-writing expert stating that

the signatures of Mr. Maneklal Suthar are forged by the respondent – accused himself charge levelled against him was not satisfactorily proved. The learned Magistrate has, therefore, after considering the entire evidence on record has acquitted the respondent accused. The Court, therefore, is not inclined to interfere with the judgment and order passed by the learned Magistrate acquitting respondent accused.

9. The reasons recorded by the learned Judge are logical and there is no element of perversity or patent illegality. The Apex Court in a decision in the case of **Dwarkadas v. State of Haryana, reported in (2002) 1 SCC 204**, has reiterated the principles of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is possible. In the same way, the observations of the Apex Court in the case of **Kanshiram v.**

State of Madhya Pradesh (Re.Para-21), reported in AIR 2001 SC 2902, in respect of appeal against the order of acquittal, positively would help the accused. As per the settled legal position, while appreciating the order of acquittal, the Court should go slow in reversing the order of acquittal unless the order is absolutely illegal and perverse. In view of the ratio laid down by the Apex Court in the above cited decisions, there is no merit in the present Appeal and the same is required to be dismissed.

10. Even otherwise, the learned Magistrate has given the benefit of doubt to the respondent accused after having considered the facts and evidence and in this view of the matter, no interference is called for in the matter.

11. Considering the facts and circumstances

of the case and the settled legal position the impugned judgment and order does not call for any interference. The Appeal filed by the State is accordingly dismissed.

(K. A. PUJ, J.)

kks